

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TAMMY MCKINNEY

v.

THE KROGER CO. AND
KROGER TEXAS L.P.

§
§
§
§
§
§
§
§

CASE NO. 4:20-cv-3995

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendants The Kroger Co. and Kroger Texas L.P. (hereinafter referred to as “Defendants”), while fully reserving all rights and defenses, file this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division. Removal is proper under 28 U.S.C. §§1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas, Houston Division, has original diversity jurisdiction, as it is an action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendants respectfully would show as follows:

I. GROUNDS FOR REMOVAL

1. This case is removable to this Court based on diversity jurisdiction under 28 U.S.C. §§1332 and 1441(a).

2. Plaintiff Tammy McKinney (hereinafter referred to as “Plaintiff”) is an individual who is a citizen of Texas, and is a resident of the State of Texas.

3. The Kroger Co. is a corporation and Kroger Texas L.P. is a limited partnership. KRGP, Inc. is the General Partner of Kroger Texas L.P., and KRLP, Inc. is the Limited Partner of Kroger Texas L.P. Both are organized and existing under the laws of the State of Ohio.

4. As described more fully below, Plaintiff seeks to recover from the Defendants an amount between \$200,000.00 and \$1,000,000.00, excluding interest and costs, in her state court action.

II. PENDING STATE SUIT

5. On or about October 7, 2020, Plaintiff filed an Original Petition against Defendants in Cause No. 2020-63751 styled *Tammy McKinney v. The Kroger Co. and Kroger Texas L.P.* in the 125th Judicial District Court of Harris County, Texas.¹

6. According to Plaintiff's Original Petition, she was at the Kroger store located at 9330 Jones Road, Houston, Texas 77065 on December 17, 2019, when she tripped and fell on a metal plate that was on the floor.²

7. Plaintiff allegedly sustained bodily injuries as a result.³

8. The name and address of the Court from which the case is being removed is:

125th District Court
Harris County Civil Courthouse
201 Caroline Street
Houston, Texas 77002

III. STATE COURT DOCUMENTS

9. The following documents are attached to this Notice of Removal:

Exhibit "A" Plaintiff's Original Petition.

Exhibit "B" Certificate of Service, Plaintiff's Original Petition.

Exhibit "C" Defendants' Original Answer.

Exhibit "D" An index of matters being filed.

D-1 Copy of the state court Docket Sheet/Record.

¹ See *Plaintiff's Original Petition*, a true and correct copy of which is attached hereto as Exhibit A.

² *Id.*, at ¶¶ 9-10.

³ *Id.*, at ¶ 11.

D-2 Copy of process.

D-3 A list of all counsel of record, addresses, telephone numbers, and parties.

D-4 Civil Cover Sheet

IV. TIMING OF REMOVAL

10. Defendants were served with Plaintiff's Original Petition on October 22, 2020.⁴

This Notice of Removal is being filed within 30 days of service of the Original Petition upon Defendants and is timely filed under 28 U.S.C. §1446(b).

V. JURISDICTION

11. Pursuant to 28 U.S.C. §1332, a defendant has a right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

12. Plaintiff has asserted that she seeks damages in an amount between \$200,000.00 and \$1,000,000.00.⁵ Based on the allegations in Plaintiff's Original Petition, this matter is removable to this Court under 28 U.S.C. §1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

13. Plaintiff also alleges in her Original Petition that she is a citizen of Texas.⁶

14. Defendant The Kroger Co. is a corporation organized and existing under the laws of the State of Ohio. However, as set forth in Defendants' Verified Denial and Original Answer, Defendant The Kroger Co. is not a proper party to this lawsuit.

15. Defendant Kroger Texas L.P. is a limited partnership organized and existing under the laws of the State of Ohio. The following are the partners of Defendant Kroger Texas

⁴ See Plaintiff's Original Petition, attached as Exhibit A.

⁵ *Id.*, at p. 6.

⁶ *Id.*, at ¶ 2.

L.P., all of whom are incorporated in and citizens of the State of Ohio:

- a. KRGP, Inc. is the General Partner of Kroger Texas L.P. KRGP, Inc. is incorporated in the State of Ohio and its principal places of business is in the State of Ohio.
- b. KRLP, Inc. is the Limited Partner of Kroger Texas L.P. KRLP, Inc. is incorporated in the State of Ohio and its principal places of business is in the State of Ohio.

16. Accordingly, there exists complete diversity of citizenship between Plaintiff and Defendants under 28 U.S.C. §1332.

VI. VENUE

17. Pursuant to 28 U.S.C. §1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas, Houston Division, as it is the federal judicial district that encompasses the 125th District Court of Harris County, Texas where the state action was originally filed.

VII. NOTICE TO ADVERSE PARTIES AND TO STATE COURT

18. As the removing party, Defendants will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. §1446(d).

19. Defendants will also file a copy of this Notice of Removal with the 125th District Court of Harris County, where the state court action is currently pending, as required by 28 U.S.C. §1446(d).

VIII. ANSWER

20. Defendants timely filed an answer in the state court action. By removing this action to this Court, Defendants do not waive any defenses, objections or motions available to it under state or federal law, and will timely file responsive pleadings to Plaintiff's Original Petition in this Court as well.

PRAYER

21. For these reasons and in conformity with 28 U.S.C. §1446, Defendant respectfully removes the civil action styled *Tammy McKinney v. The Kroger Co. and Kroger Texas L.P.*, and bearing Cause No. 2020-63751 on the docket of the 125th District Court of Harris County, Texas. Defendants pray for such other and further relief, both general and special, at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted by,

/s/ Adraon D. Greene
Adraon D. Greene
Attorney-in-Charge
State Bar No. 24014533
Federal Bar No. 25029
agreene@gallowaylawfirm.com
Kelsi M. Wade
State Bar No. 24088597
Federal Bar No. 2274018
kwade@gallowaylawfirm.com

OF COUNSEL:

GALLOWAY, JOHNSON, TOMPKINS
BURR & SMITH
1301 McKinney Suite 1400
Houston, Texas 77010
(713) 599-0700 – Phone
(713) 599-0777 – Fax

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2020, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

Aysia Mayo-Gray
HOLLINS LAW GROUP, PLLC
5832 Highway 6 North
Houston, Texas 77084

/s/ Kelsi M. Wade

Adraon D. Greene

Kelsi M. Wade